IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL NO. 288 OF 2003
In
SPECIAL CIVIL APPLICATION NO. 2023 OF 2001
With
CIVIL APPLICATION NO. 717 OF 2003
In LETTERS PATENT APPEAL NO. 288 OF 2003

With

LETTERS PATENT APPEAL NO. 290 OF 2003
In SPECIAL CIVIL APPLICATION NO. 2021 OF 2001
With
CIVIL APPLICATION NO. 707 OF 2003
In LETTERS PATENT APPEAL NO. 290 OF 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge?

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BOTAD NAGARPALIKA - Appellant(s)

Versus

JAYABEN MANSUKHBHAI & 7 - Respondent(s)

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Appearance :
MRS. SANGEETA PAHWA
for M/S THAKKAR ASSOCIATES for Appellant.
MR. KISHOR M. PAUL for Respondent No(s).: 1, 2, 3, 4, 5,6.
MR. H.M. PRACHCHHAK, AGP for Respondent No(s).: 7.
DS AFF.NOT FILED (R) for Respondent No(s).: 8.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

and

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 11/08/2005

COMMON ORAL JUDGMENT
(Per : HONOURABLE MR.JUSTICE R.S.GARG)

1. Learned Counsel for the appellant vehemently contended that the respondents were not appointed on regular basis, therefore, an award could not be made in their favour. It is also submitted that though the school is run and managed by the Municipality, but, in the staffing pattern, no posts of peon are made available for Jilla Prathmik Shikshan Samiti. It is also submitted that 95% grant is given by the State Government and as the Government is not extending grant for the employee, who is beyond the staffing pattern, an order of regularisation could not be made.

2. On page-72 (in Letters Patent Appeal No.288 of 2003), we find Resolution No.345 dated 26th February, 1976. From the said Resolution, it would clearly appear that persons were to be appointed as Waterman/Waterwoman and 100% expenses were to be borne by the Municipality. When the school is run and managed by the Municipality and the appointments are also made by the Municipality, then, it would be incorrect to say that in the school, there is no staffing pattern or in the Municipality, there is no staffing pattern for the school, therefore, regularisation could not be made.

3. As a fact, it would be clear that persons were appointed by the Municipality and their services were kept at the disposal of the school authorities. They continued to be

the employees of the Municipality. If they continue to be the Municipal employees, then, it would be too much on the part of the Municipality to say that they could not be regularised.

4. So far as the question of grant is concerned, it would be for the Municipality to make an application to the State Government for allocating the grant or to change the staffing pattern, but, they cannot be allowed to say that the person, who was employed in the year 1976 under a regular Resolution, would not be entitled to be regularised. We find no reason to interfere. Both the appeals are dismissed.

5. In view of the dismissal of the appeals, the Civil Applications are dismissed.

[***R.S.Garg, J.***]

[***Ravi R.Tripathi, J.***]

*kamlesh**